IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/09/2002

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THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

C.R.P.NO.499 OF 2001
AND
C.M.P.NO.2724 OF 2001

1. Lalitha
2. Selvaraj
3. Srinivasan .. Petitioners

-Vs-

K.Shanthi .. Respondent

!For Petitioners :: Mr.R.Subramanian

^For Respondent :: Mr.V.Raghavachari

Prayer: This Revision is preferred against the order dated 20-12-2000 made in I.A.No.117 of 2000 in O.S.No.505 of 1998 by the I Addl. District Munsif, Dindigul.

:ORDER
The challenge in this Revision is to the order of the Court below dated 20-12-2000 made in I.A.No.117 of 2000 in O.S.No.505 of 1998f ordering the amendment as prayer for by the respondent.
2. Having heard the learned counsel for the respective parties, the brief facts required for the disposal of the Revision are as under.
3. The respondent filed a suit for permanent injunction to restrain the petitioners from interfering with the respondent's right of enjoyment of ABCD marked common pathway in the suit schedule plan by putting up any construction by way of encroachment. The basis of the said claim as mentioned in the plaint in para 4 was that the petitioners and the respondent were enjoying the said pathway continuously as a right of easement by necessity of prescription. The said suit was filed in the year 1998. While so, by the present application filed in 20 00 i.e. after the filing of the written statement by the petitioners herein on 21-1-2000, the respondent sought for an amendment for addition of certain averments in paragraph 4 and for consequential amendments in the Court fee column and the prayer portion.
4. The sum and substance of the amendment now sought for and allowed by the Court below was that the from time immemorial, the suit pathway was dedicated to be used as a public street and therefore it should be declared as a public street and the injunction as originally prayed for should be granted

apart from issuing a mandatory injunction to remove unlawful constructions made by the petitioners during the pendency of the suit in order to restore 'B' schedule pathway as a public street. The said application was resisted by the petitioners by contending that the whole attempt was to set up a new case on a different cause of action and if the same is permitted, that would cause irreparable loss and prejudice to the petitioners.

5. According to the petitioners, the Court below, while ordering the application for amendment, failed to apply its mind, had passed a cryptic order without assigning any reasons. It was pointed out that there was total non-application of mind, inasmuch as, of the five judgments referred to by the Court below, stated to have been relied on by the respondent, in four of the citations, there was no such case as referred to by the Court below, while the fifth one had nothing to do with amendment of pleadings under Order 6 Rule 17 of C.P.C. The learned counsel for the petitioner relied upon the judgment rendered by His Lordship Mr.Justice A.S.Venkatachalamoorthy, reported in 2002 (1) C.T.C.618 (PALANIAMMAL versus V.K.RAMANATHAN & 4 OTHERS), wherein after elaborately considering the legal position in regard to amendment of pleadings, the principles have been summed up and according to the petitioners, principles 2 and 5 get attracted to the facts of this case.

6. The learned counsel for the respondent would however, contend that in regard to the applications filed under Order 6 Rule 17 C.P.C., the Honourable Supreme Court has held in the judgment reported in 2000 (1) SCC 712 (B.K.NARAYANA PILLAI versus PARAMESWARAN PILLAI) to the effect that-

"Liberal approach should be general rule particularly in cases where the other side can be compensated with costs. Technicalities of law should not be permitted to hamper the administration of justice between the parties and amendments are allowed in the pleadings to avoid multiplicity of litigation."

and therefore no interference is called for in this Revision.

7. The Court below without going into the rival contentions, by merely referring to the case laws relied upon by either side, proceeded to allow the application by stating that the present claim of the respondent that the suit pathway is a public street is to be established by her and that whether such a claim can be made only in a representative capacity can be gone into only at the time of trial.

8. I am afraid that such a conclusion of the Court below while dealing with an application under Order 6 Rule 17 C.P.C. can be sustained. The relevent principles while dealing with the applications filed under Order 6 Rule 17 C.P.C. have been repeatedly set out and inasmuch as, His Lordship Mr.Justice A.S.Venkatachalamoorthy has elaborately dealt with the said question in the judgment referred to earlier, namely, in the one reported in 2002(1) C.T.C.618, wherein, the learned Judge has taken pains to refer to all the earlier case laws before summing up the principles to be considered in an application filed under Order 6 Rule 17 C.P.C., I feel that it would be suffice if those principles are extracted for our present purpose.

"16. To sum up the legal position,

(1) The power to allow amendment is wide and hence the Court should not adopt hyper technical approach but on the other hand liberal approach should be the general rule particularly in cases where the other side can be compensated with costs.

(2) The general rule is that the party is not allowed to set up new

case or new cause of action.
(3) Technicalities of law should not be permitted to hamper the administration of justice between the parties and amendments are allowed in the pleadings to avoid multiplicity of litigation.
(4) Courts cannot go into the truth or falsity of the proposed amendments sought for at the time of considering the application for amendment.
(5) All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action one the basis of which the original lis was raised or defence taken.
(6) All reliefs ancillary to main relief and reliefs which are in the nature of additional reliefs should be allowed as general rule.
(7) Even if a party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed but however, the party who is put to inconvenience should be suitably paid. The Court has to only see that the error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued.
(8) The delay in filing petition for amendment should be properly compensated by cost and the error or mistake, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement.
9. However, on a perusal of one other judgment referred to by the learned counsel for the petitioner reported in 1999 (3) L.W.885 (GURUSAMY GOUNDER versus MUTHUSAMY GOUNDER AND PALANISAMY), I am of the view that there is one other relevant principle which will also have an equal importance in an application to be dealt under Order 6 Rule 17 C.P.C. In fact, that principle has been settled by the Honourable Supreme Court in 1998 (1) SCC 278 (HERALAL versus KALYAN MAL), where again, the Honourable Supreme Court relied upon a three Judges Bench judgment of the Honourable Supreme Court reported in 1976 (4) SCC 320 (MODI SPINNING & MANUFACTURING MILLS CO.LTD. Versus LADHA RAM & CO.). In para 9 of the Judgment reported in 1998(1) SCC 278, the proposition has been set out as under:
"..... This decision of a Bench of three learned Judges of this Court is a clear authority for the proposition that once the written statement contains an admission in favour of the plaintiff, by amendment such admission of the defendants cannot be allowed to be withdrawn if such withdrawal would amount to totally displacing the case of the plaintiff and which would cause him irretrievable prejudice. ...." (Emphasis applied)

10. In the Judgment of the Honourable Supreme Court reported in 2000 (1) SCC 712 (B.K.NARAYANA PILLAI versus PARAMESWARAN PILLAI), it has been held that the principles applicable to the amendments of the plaint are applicable to the amendments of the written statement. The Honourable Supreme Court has stated the legal position as under in para 4.

"4. ..... All amendments should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which, the original lis was raised or defence taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or

mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. The proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. ..."
(Emphasis applied).

11. I am therefore of the view that of the various principles set out by His Lordship Mr.Justice A.S.Venkatachalamoorthy in para 16 of the judgment reported in 2002 (1) C.T.C. 618, one more principle could be added to the effect that once the pleadings contained an admission in favour of the other side, by amendment, such admission cannot be allowed to be withdrawn if such withdrawal would amount to totally displacing the case of the other side and which would cause irretrievable prejudice to him, especially such amendment is sought for based on inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts.
12. Keeping in mind the above stated principles in relation to applications filed under Order 6 Rule 17 C.P.C., when the case on hand is considered, while the respondent originally approached the Court below with a plea that the suit pathway was in the enjoyment of the petitioners as well as the respondent in common from time immemorial which prescribed a right in favour of the respondent on the principle of right of easement by necessity of prescription, by seeking for an amendment in addition to the existing claim as above, the respondent wants to contend that the suit pathway was already dedicated for the public at large to be used as a public street and therefore it should be declared as such. The amendment in the pleadings as well as in the prayer of the plaint was sought for in addition to the existing claim of the respondent for a prayer for permanent injunction as against the petitioners. Therefore, while on the one hand, the respondent contended that the suit pathway was a common pathway in the enjoyment of the petitioners and the respondent for their exclusive use, the respondent wants to now contend that apart from the said position, it should also be declared as a public street meant for usage of the public at large.
13. When such a claim is considered, as rightly contended by Mr.R. Subramanian, learned counsel appearing for the petitioners, in my view, the said claim if to be ultimately granted, will involve consideration of inconsistent prayers. It is not the case of the respondent that the suit pathway which was earlier claimed as a common pathway as between the petitioners and the respondent, should now be declared as a public street. On the other hand, the respondent while retaining her earlier claim of exclusive common right over the pathway as between the petitioners and the respondent, wants to now contend that it should also be declared as a public street. If the present plea of the respondent that she should be permitted to raise her claim that the suit pathway should also be declared as a public street, then her earlier claim on the footing that as between the petitioners and the respondent, it was common ground that the suit pathway was in their common enjoyment from time immemorial would automatically stand withdrawn. Certainly if such a consequence is to result in by virtue of the amendment now sought for and ordered by the Court below, the principles set out by the Honourable Supreme Court in the judgments reported in 1998(1) SCC 278 (HEERALAL versus KALYAN MAL) gets attracted and the withdrawal of earlier stand of the respondent would certainly cause serious and irretrievable prejudice to the

petitioners. I am of the view that such a situation cannot be allowed to take place. Certainly, in my view, the original plea of the respondent in respect of the schedule pathway as a right of easement by necessity of prescription cannot stand, the moment the respondent seeks for an amendment to the effect that the said suit pathway should also be declared as a public street. Such a stand of the respondent can only be characterized as totally inconsistent in its existence and would be hit by one of the principles in relation to an amendment application to be considered under Order 6 Rule 17 C.P.C.
14. For the very same reason, it will have to be held that such a plea for amendment claimed and ordered by the Court below would result in setting up of a new case on a new cause of action which is not permissible in an application filed for amendment under Order 6 Rule 17 C.P.C. Moreover, as rightly contended by the learned counsel for the petitioners, if the respondent's present plea that the suit path way is to be declared as a public street, then the suit itself should have been filed in a representative capacity and admittedly such is not the case here.

15. Therefore, looked at from any angle, I am convinced that the respondent miserably failed to make out a case for amendment within the four corners of the provision contained in Order 6 Rule 17 C.P.C. and the order of the Court below in not considering the above vital aspects before ordering the said application vitiates its order and the same cannot be allowed to stand. The, C.R.P. therefore stands allowed and the order of the Court below impugned herein is set aside. No costs. Consequently, C.M.P. is closed.

18-09-2002
Index: Yes/No
Internet : Yes/No
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To
The I Addl.District Musnif,
Dindigul.

F.M.IBRAHIM KALIFULLA, J.

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